

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| HILDA L. SOLIS, SECRETARY OF LABOR, | : | |
| UNITED STATES DEPARTMENT OF LABOR, | : | |
| | : | |
| Plaintiff, | : | Civil Action No. _____ |
| | : | |
| v. | : | |
| | : | |
| JAMES V. SUJANSKY, PIONEER, INC. | : | |
| D/B/A SUPER CITY SPORTS, SUPER CITY | : | |
| SPORTS, INC., AND THE SUPER CITY SPORTS: | : | |
| SALES, INC. 401(K) PROFIT SHARING PLAN | : | |
| | : | |
| Defendants. | : | |
| | : | |

COMPLAINT

Hilda L. Solis, Secretary of Labor, United States Department of Labor, hereby alleges:

JURISDICTION AND VENUE

1. This cause of action arises under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et seq., and is brought by the Secretary under Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), to enjoin acts and practices which violate the provisions of Title I of ERISA, to obtain appropriate relief for breaches of fiduciary duty under ERISA Section 409, 29 U.S.C. § 1109, and to obtain such other further relief as may be appropriate to redress violations and enforce the provisions of Title I of ERISA.
2. This Court has subject matter jurisdiction over this action pursuant to Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).
3. The Super City Sports Sales, Inc. 401(k) Profit Sharing Plan (the "Plan") is an employee benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), and is therefore subject to the coverage of the Act, pursuant to Section 4(a) of ERISA, 29 U.S.C. §

1003(a). The Plan is administered in Somerset, Pennsylvania.

4. Venue with respect to this action lies in the Western District of Pennsylvania, pursuant to Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2).

THE PARTIES

5. The Secretary, pursuant to Sections 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1132(a)(2) and (5), has the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and others who commit violations of ERISA.

6. Super City Sports Sales is a business located at 3457 Glades Pike, Somerset, PA, and is in the business of selling and servicing trailers, motorcycles and snowmobiles. Super City Sports Sales is owned and operated by either Super City Sports Sales, Inc. or Pioneer Inc., doing business as Super City Sports Sales. Pioneer Inc. also runs a business operating campgrounds, and is located at 273 Trent Road, Somerset, PA.

7. Super City Sports Sales, Inc. is the Plan Sponsor and Plan Administrator of the Plan. In the alternative, Pioneer Inc. doing business as Super City Sport Sales is the Plan Sponsor and Plan Administrator of the Plan. Plan documents alternatively refer to both corporations as the Plan Sponsor and the Plan Administrator.

8. Pioneer, Inc. is the parent company of Super City Sports Sales, Inc.

9. Upon information and belief, Super City Sports Sales, Inc. and Pioneer, Inc. doing business as Super City Sports Sales functioned as one company. Employees at the Glades Pike location were issued W-2 forms that identified their employer as “Pioneer, Inc. DBA Super City Sports Sales.” Pioneer Inc. made contributions to the Plan in behalf of the employees at the

Glades Pike location. Plan assets were deposited in bank accounts controlled by Pioneer, Inc.

10. For the remainder of this Complaint, Super City Sports Sales, Inc. and Pioneer, Inc. doing business as Super City Sports Sales will be referred to collectively as “Super City.”

11. At all relevant times, Super City exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Super City is therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in either Sections 3(14)(A), (C), (E) and (G) of ERISA, 29 U.S.C. §§ 1002(14)(A), (C), (E) and (G).

12. At all relevant times, Sujansky was the general manager of the Super City Glades Pike location and was the trustee of the Plan. At all relevant times, Sujansky exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan’s assets, and had discretionary authority or discretionary responsibility in the administration of the Plan. Sujansky is therefore a fiduciary of the Plan within the meaning of Section 3(21) of ERISA, 29 U.S.C. § 1002(21), and a party-in-interest as that term is defined in Sections 3(14) (A) of ERISA, 29 U.S.C. §§ 1002(14)(A).

13. The Plan is joined as a party defendant pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

GENERAL ALLEGATIONS

14. Super City established the Plan effective January 1, 2001. The Plan permitted

participants to contribute a portion of their pay to the Plan as elective salary deferrals (“employee contributions”) through payroll deductions.

15. For payroll periods between July 10, 2002 and September 15, 2006 (“the relevant period”), Super City deducted money from the participants’ pay as employee contributions to the Plan. During the relevant period, Super City and Sujansky failed to remit approximately \$10,688.00 in employee contributions to the Plan. In addition, Super City and Sujansky remitted certain employee contributions late without interest.

16. Unremitted employee contributions are assets of the Plan within the meaning of ERISA. Defendants failed to segregate the Plan assets from the general assets of Super City.

17. Sujansky failed to ensure that the Plan assets described in paragraph 15, *supra*, were collected by the Plan.

18. In addition, in September 2006, Sujansky withdrew the remaining assets of the Plan from the Plan’s trust account (totaling approximately \$10,479.00) and deposited the monies into Pioneer, Inc.’s corporate account. Pioneer, Inc. did not return the monies to the Trust.

VIOLATIONS

19. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, the Secretary adopts by reference the averments and allegations of paragraphs 1-18 inclusive.

20. By the actions and conduct described in paragraphs 1-18, Defendants, as fiduciaries of the Plan:

- a. failed to ensure that all assets of the Plan were held in trust by one or more trustees, in violation of Section 403(a) of ERISA, 29 U.S.C. § 1103(a);
- b. failed to ensure that the assets of the Plan did not inure to the benefit of

Super City in violation of Section 403(c)(1) of ERISA, 29 U.S.C. § 1103(c) (1);

- c. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A);
- d. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B);
- e. caused the Plan to engage in transactions which they knew or should have known constituted the direct or indirect transfer of Plan assets to, or use of Plan assets by or for the benefit of a party-in-interest, in violation of Section 406(a)(1)(D) of ERISA, 29 U.S.C. § 1106(a)(1)(D);
- f. dealt with assets of the Plan in their own interest or for their own account, in violation of Section 406(b)(1) of ERISA, 29 U.S.C. § 1106(b)(1); and
- g. acted in a transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan or the interests of its

participants or beneficiaries in violation of Section 406(b)(2) of ERISA, 29 U.S.C. § 1106(b)(2).

21. By participating knowingly in the fiduciary breaches of Sujansky, knowing such acts or omissions to be breaches of fiduciary duty, Super City is liable for Sujansky's breaches of fiduciary responsibility, pursuant to Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1).

22. Super City, as a fiduciary of the Plan, by failing to make reasonable efforts under the circumstances to remedy Sujansky's breaches of which it had knowledge, is liable for his fiduciary breaches, pursuant to Section 405(a) (3) of ERISA, 29 U.S.C. § 1105(a)(3).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays that this Court issue an order:

- a. Ordering the defendants to restore to the Plan all losses, including interest or lost opportunity costs and the costs of the independent fiduciary, which were caused by their fiduciary misconduct;
- b. Requiring the Plan to set off any individual account balance of Sujansky against the amount of losses, including interest or lost opportunity costs and the costs of the independent fiduciary, resulting from his fiduciary breaches, as authorized by 29 U.S.C. § 1056(d)(4), and reallocate it to the non-breaching participants, if the losses are not otherwise restored to the Plan by defendants;
- c. Removing defendants Sujansky, Super City Sports Sales, Inc., and Pioneer, Inc. as fiduciaries of the Plan and of any employee benefit plan for which Sujansky, Super City Sports Sales, Inc. or Pioneer, Inc. act as fiduciaries;

- d. Permanently enjoining Sujansky, Super City Sports Sales, Inc. and Pioneer, Inc. from acting directly or indirectly, in any fiduciary capacity, with respect to any employee benefit plan subject to ERISA;
- e. Permanently enjoining Sujansky, Super City Sports Sales, Inc. and Pioneer, Inc. from exercising any custody, control, or decision making authority with respect to the assets of any employee benefit plan covered by ERISA;
- f. Appointing an independent fiduciary with plenary authority and control with respect to the management and administration of the Plan, including the authority to marshal assets on behalf of the Plan, to pursue claims on behalf of the Plan, and to take all appropriate action for the termination of the Plan and the distribution of benefits to the Plan's participants and beneficiaries, with all costs to be borne by the defendants;
- g. Ordering the defendants, their agents, employees, service providers, banks, accountants, and attorneys to provide the Secretary and the independent fiduciary with all of the books, documents, and records relating to the finances and administration of the Plan, and to make an accounting to the Secretary and to the independent fiduciary of all contributions to the Plan and all transfers, payments, or expenses incurred or paid in connection with the Plan;

- h. Awarding plaintiff, Secretary of Labor, the costs of this action; and
- i. Awarding such other relief as is equitable and just.

Respectfully submitted,

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Solicitor of Labor

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